IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 382 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

BHAGWATI SHIPBREAKING INDUS.

Appearance:

1. INCOME TAX REFERENCE No. 382 of 1992

MR MANISH R BHATT for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE A.M.KAPADIA

Date of decision: 17/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question has been referred for our opinion

for assessment year 1985-86:-

"Whether, the Appellate Tribunal is right in law and on facts in directing the assessing officer to allow deduction u/s.80HHA and 80-I when the assessee was carrying on ship breaking activity?"

2. We have heard Mr MR Bhatt, learned Standing Counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention is invited to the decision of this Court in CIT vs. Vijay Ship Breaking Corporation, 261 ITR 113 wherein this Court has taken the view, in the context of the provisions of Section 80HH and 80I of the Income-tax Act, 1961, that ship breaking is not a manufacturing activity. Since the provisions of Section 80HHA are also similar to the provisions of Section 80HH and 80I in so far as the question of eligibility for getting deduction under the said provision is concerned, we follow the aforesaid decision of this Court and answer the question referred to us in the negative i.e. in favour of the revenue and against the assessee.

4. The reference accordingly stands disposed of.

(M.S. SHAH, J.)

(A.M.KAPADIA, J.)
zgs/-